

Exhibit 332

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

CAUSE NO. GV002327

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THE STATE OF TEXAS) IN THE DISTRICT COURT
 ex rel.)
 VEN-A-CARE OF THE)
 FLORIDA KEYS, INC.)
)
 Plaintiffs,)
)
 VS.) TRAVIS COUNTY, TEXAS
)
 DEY, INC.; ROXANE)
 LABORATORIES, INC. and)
 WARRICK PHARMACEUTICALS)
 CORPORATION,)
)
 Defendants.) 53rd JUDICIAL DISTRICT

 ORAL AND VIDEOTAPED DEPOSITION OF
 CHARLES A. RICE
 October 30, 2001

ORAL DEPOSITION OF CHARLES A. RICE, produced
 as a witness at the instance of the Plaintiffs and duly
 sworn, was taken in the above-styled and numbered cause
 on the 30th day of October 2001, from 9:06 a.m. to 5:02
 p.m., before Randall N. Finch, CSR in and for the State
 of Texas, reported by machine shorthand, at the offices
 of Coudert Brothers, 600 Beach Street, Third Floor,
 San Francisco, California 94109, pursuant to Notice,
 the Texas Rules of Civil Procedure and the provisions
 as previously set forth.

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1 A. Yes, sir, I see it.

2 Q. Ever seen that before?

3 A. Yes, I have.

4 Q. Purports to be a memo dated 30 May 1995 from

5 Helen Burnham to sales and marketing with an attachment

6 to it --

7 A. Yes, sir.

8 Q. -- cc R.F. Mozak?

9 A. Yes.

10 Q. Now, in 1995, as I understand it, you were not

11 responsible for sales and marketing in a managerial

12 capacity?

13 A. No, I was.

14 Q. You were at that time?

15 A. Yes. It was only prior to the middle of 1992

16 that I was not.

17 Q. Okay. So Ms. Burnham I would assume then

18 indirectly reported to you?

19 A. Indirectly through a circuitous route, yes,

20 sir.

21 Q. Okay. Now, when was the first time you saw

22 this document?

23 A. That I don't recall.

24 Q. Did you see it at the time that it was created

25 by Ms. Burnham?

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1 A. No, sir, I don't believe so.

2 MR. HUDSPETH: Excuse me, may I just

3 Interject. I think you have attached to here something

4 that is not the attachment to the document as it

5 appears. At least it's not in numerical sequence in

6 the production that was given by Dey.

7 MR. BREEN: Well, to make is easier, if

8 you want to remove that, Counsel, I have no objection

9 to it.

10 MR. HUDSPETH: Yes, so we are marking --

11 just so we are clear on the record, Exhibit 72 will now

12 consist of one page which is -- what is the first

13 page -- what has been previously referred to as Exhibit

14 72. The second page is now removed. So henceforth

15 when we speak of Exhibit 72 we're talking about a

16 one-page document.

17 MR. BREEN: That's fine.

18 MR. ANDERSON: Let's go off the record.

19 VIDEOGRAPHER: We're off the record at

20 1:48 p.m.

21 VIDEOGRAPHER: Back on the record at

22 1:48 p.m.

23 MR. BREEN: Read my last question back

24 for my train of thought purposes.

25 (Requested portion was read)

1 Q. (By Mr. Breen) I see some writing next to

2 Ms. Burnham's name and date which appears to say Helen.

3 Do you see that?

4 A. Yes, sir, I see it.

5 Q. Do you know if that is or is not Ms. Burnham's

6 writing?

7 A. I don't know. I can presume it is, but I

8 don't recognize her signature, sorry.

9 Q. Okay. On the bottom the preparer's initials

10 appear to be HB:MF. Do you know who MF is?

11 A. I'm trying to recall, but I don't know people

12 employed in the company at that time. I suspect it was

13 a secretary. I -- I don't know if Ms. Burnham actually

14 had a secretary --

15 Q. Okay.

16 A. -- but we could con -- you know, again, we

17 could consult our files to find out.

18 Q. The memorandum purports to be about Albuterol

19 WAC pricing. Do you see that?

20 A. Yes, do I.

21 Q. Now, what was Ms. Burnham's responsibility in

22 May of 1995 at Dey -- at Dey?

23 A. Ms. Burnham was Manager of Marketing.

24 Q. And so she managed the entire marketing

25 department?

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1 A. Yes, at that time.

2 Q. And if I understood your -- your testimony

3 earlier, the marketing department had responsibility at

4 that time for establishing prices of Dey's products?

5 A. Marketing and sales.

6 Q. And sales?

7 A. Yes.

8 Q. And sales and marketing is basically housed

9 under one roof, correct?

10 A. That's correct.

11 Q. So who at Dey was superior to Ms. Burnham with

12 respect to actual responsibility for setting prices?

13 A. Mr. Mozak.

14 Q. And you can see here that this memo was cc'd

15 to R.F. Mozak, correct?

16 A. Yes, I see that.

17 Q. Now, are you aware of any document or response

18 memorandum or e-mail or anything that exists whereby

19 Mr. Mozak took issue with anything that Ms. Burnham

20 says in this memo?

21 A. I'm not aware of that, no.

22 Q. Have you ever had any discussion with

23 Mr. Mozak about Ms. Burnham's memo of May 30, 1995?

24 A. I'm sure I have, yes, sir.

25 Q. Can you recall any of those discussions that

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1 A. My invoice price to wholesalers is WAC. I

2 don't think I can state it any clearer.

3 **Q. So is it your testimony today that the State**

4 **of Texas should rely upon Dey's representation of WAC**

5 **in order to estimate acquisition cost?**

6 A. Since I'm not familiar with what the state

7 considers estimated acquisition cost to be, I can't

8 answer that question.

9 **Q. Well, if you were paying for Dey's drugs,**

10 **would you rely upon your WAC to estimate acquisition**

11 **cost?**

12 MR. HUDSPETH: Objection; form.

13 THE WITNESS: I can't answer that.

14 **Q. (By Mr. Breen) Well, Ms. Burnham said that --**

15 **in her memo of May 30, 1995, that "WAC is not**

16 **representative of our published wholesale list prices,**

17 **but, like AWP, is used for calculation of**

18 **reimbursement. Our updated WAC values are in line with**

19 **the Warrick WAC values provided by First Data Bank and**

20 **should level the playing field for Medicaid**

21 **reimbursement."**

22 **Is that true, what she said about your**

23 **WAC prices?**

24 A. No, sir, it's not. It isn't -- it was not

25 then, it is not today, nor has it ever been, to my

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1 knowledge. What compelled her to write that, I have no

2 idea.

3 **Q. Well, she said that "Our updated WAC values**

4 **are in line with WAC -- Warrick WAC values provided by**

5 **First Data Bank." Is that part untrue?**

6 A. To the best of my knowledge, the "updated WAC

7 prices" she's referring to was what she in fact

8 reported only to Blue Book. She did not report it to

9 Red Book, Medi-Span or any state agency. That's what

10 our documents show.

11 **Q. Do you know if Warrick's WAC prices for the**

12 **relevant drugs today are higher than Dey's?**

13 A. I can't say that I know that for all the

14 relevant drugs.

15 **Q. But you testified earlier that you felt that**

16 **Dey's WAC prices are in general lower than its**

17 **competition. Correct?**

18 A. And historically that's been true. You asked

19 about today. I'd have to consult the data reports and

20 see what the prices that are reported reveal.

21 **Q. So is it your testimony that historically,**

22 **based upon the best information that's been made**

23 **available to you so far, or that you've reviewed so**

24 **far, that historically Warrick's WAC prices have been**

25 **higher than Dey's?**

1 A. Yes, sir.

2 **Q. Do you believe that Warrick's true prices have**

3 **been higher than Dey's?**

4 MR. HUDSPETH: Objection to form.

5 MR. MOORE: Same objection.

6 THE WITNESS: Can you define true price?

7 **Q. (By Mr. Breen) The prices that are really**

8 **paid by their customers after deducting all**

9 **chargebacks, discounts, rebates and other reductions in**

10 **price.**

11 A. I actually don't know the answer to that.

12 **Q. Well, when you testified earlier that Dey's**

13 **WAC prices are historically lower than its competition,**

14 **I took that as a reason to believe that Dey is trying**

15 **to sell product at the lowest price possible in the**

16 **competitive marketplace. Did I misunderstand you?**

17 A. Considering the fact that you and I haven't

18 discussed anything regarding the lowest price possible,

19 I don't know how you've reached that conclusion.

20 **Q. Well, do you think it's a good thing that**

21 **Dey's WAC prices are historically the lowest in the**

22 **marketplace for your drugs?**

23 A. It's a good thing for Dey.

24 **Q. Why?**

25 A. For a lot of different reasons.

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1 **Q. What are they?**

2 A. For example, with the lower WAC price, the

3 prompt pay discount is lower. If I use a higher WAC

4 price and provide a prompt pay discount, for example,

5 one percent or two percent, that number is higher. So

6 I prefer to pay a lower prompt pay discount.

7 Similarly, to the total amount of chargebacks involved,

8 if -- if the WAC tends to be a high -- at a high level

9 and the market price -- or the contract price, excuse

10 me, is significantly lower, there's a great deal of

11 cash which is tied up on the part of the wholesaler and

12 on the part of Dey.

13 The wholesaler has paid at WAC. Dey is

14 reimbursing at a later time, whenever the contract is

15 served. The wholesaler is without cash. Dey is

16 holding cash they can't do anything with and eventually

17 reimburses it back. That's not good for the customer

18 nor for Dey if that number is very, very high. So

19 having a lower amount involved in the chargeback

20 process is to our advantage.

21 Similarly, if that number gets extremely

22 large -- well, if there's an error, one percent of a

23 very large number is worth a lot more than one percent

24 of a very small number. So a smaller number in the

25 chargeback area is much more manageable.